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Report of the Special Rapporteur on minority issues on her mission to Brazil: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on minority issues on her mission to Brazil

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Report of the Special Rapporteur on minority issues on her mission to Brazil (14-24 September 2015): comments by the State*

Comments by the Brazilian Government on the advanced edited version of the report of the visit of the Special Rapporteur on minority issues to Brazil

Brazil thanks the Special Rapporteur for her report and for the positive references to policies and measures implemented by the Brazilian government with a view to guaranteeing the promotion and protection of the human rights of minorities and to enhancing their living conditions.

Brazil also thanks the Special Rapporteur for the comprehensive nature of the report, which reflected in its analysis and recommendations the complexity of the Brazilian landscape.

The Brazilian government seizes this opportunity to present clarifications and additional information on important issues covered by the Report.

Conditionalities of Social Programs

As mentioned by the report (paragraph 41), Brazil has largely met the Millennium Development Goals due to the successful implementation of social programs focused on the poorest. Hunger was eradicated and extreme poverty was reduced to a seventh: 3,5% in 2012, compared to 25,5% in 1990. People belonging to historically marginalized groups such as ethnic minorities (roma, quilombola and others) were the greatest beneficiaries.

It should be noted that such policies were designed to have a positive and structural impact in the struggle against extreme poverty in the long run. They secure health assistance and school attendance for children and, therefore, contribute to promote inclusion. Direct beneficiaries of "Bolsa Família" are preferably women and they have to comply with a series of conditions aimed at guaranteeing the well-being and health of the whole family:

(a) children between 6 and 15 years old have to be enrolled in school;

(b) children's school attendance must reach at least 85%;

(c) all changes related to the education of their children between 6 and 15 years old must be informed to local authorities in charge of the Program;

(d) pregnant and nursing women must be enrolled in prenatal care programs and attend prenatal appointments at the health unit closer to their place of residence and take part in educational activities on breastfeeding and the promotion of healthy nutrition; and

(e) parents of children below the age of 7 must take their children to health units regularly and comply with the immunization calendar established by the Ministry of Health.

Investigations of alleged abuses committed by the police

Concerning efforts to prevent and punish any kind of violence and abuse allegedly committed by the police, it is important to indicate that on January 4, 2016, the Superior Council of the Federal Police and the National Council of Civil Police Chiefs issued a joint resolution abolishing in the whole country the use of the terms "resistance followed by death" ("autos de resistência" or "resistência seguida de morte"), with a view to

* Reproduced as received.

guaranteeing that homicides committed by security agents are duly investigated. According to the resolution, all such incidents must be registered as "injury following opposition to police intervention" or "homicide following opposition to police action" and will be promptly investigated whenever they occur. The cases will be referred to the Public Prosecutor's Office, even when an internal procedure is initiated by the police. The Chief of Police in charge will investigate if the accused and those who helped him/her exercised adequate restraint in defending themselves or overcoming resistance offered by the victim.

Rights of traditional communities

The Brazilian government rejects the notion that Brazil prioritizes economic and development policies in detriment of the rights of traditional communities. Such allegation does not adequately reflect the Brazilian reality.

The Brazilian State puts in place all means available to ensure the compatibility between the legitimate wish of the society for wellbeing and economic development and the rights of such communities. To that end, the National Policy for the Environment establishes that development projects need environment licensing so that activities which risk to cause pollution or environmental degradation can be monitored. The issuing of an environment license follows a three phase process involving the issuing of a "provisional license", which approves the environmental viability of the project, without authorizing its implementation; an "establishment license" ("licença de instalação"), which authorizes the beginning of the work; and an "operation license", which authorizes the start of its operation. The process is conducted under the National System of the Environment (SISNAMA).

The agencies involved in the environmental licensing shall submit to the Brazilian Institute for the Environment (IBAMA) conclusive demonstration of the Environmental Study required for licensing. According to Interministerial Ordinance No. 419 (Oct 26th 2011), the Palmares Cultural Foundation is responsible for assessing the impacts on quilombola lands of development projects as well as the adequacy of the measures to control and mitigate any negative impact resulting from the project.

It should be underlined that, as a developing, medium-income country, Brazil sees no incompatibility between, on the one hand, much needed development investments and, on the other, the preservation of the environment and/or the guarantee of human rights. The State regulates and promotes investments and projects aiming at the welfare of the population, taking into account the diverse reality of the country and the specific needs of traditional populations.

Prior consultation is the main instrument established by international law in this regard. Even though prior consultation does not give veto power to the communities, Brazil aims to create conditions for the decision-making process to be transparent, informative, participatory and fair. This is the essence of the right to prior consultation, in line with ILO Convention 169.

Above all, the process should be conducted in good faith, ensuring traditional communities the right to receive accurate information; the opportunity to assess the impact of a given measure on their lives; and to request, when appropriate, relevant changes in the project or compensation for circumstantial damages.

International Law is flexible not only in relation to the forms and procedures to carry out the consultation, but also in relation to possible solutions that ensure the interests and rights of all parties - government, society, businesses and local communities. The government may seek creative solutions to accommodate the community's demands in good faith and in a transparent and inclusive manner.

Brazil has kept an open dialogue with the communities regarding major investment projects near their lands by holding public hearings and other mechanisms of social participation.

Quilombo dos Macacos

Another important aspect of the report is the concern over alleged human rights violations committed against members of the Rio dos Macacos community in Bahia.

The community vindicates as its traditional lands the area occupied by the naval village of Barragem, which is home to 450 military families. It is also used for training, as a base of operations and other strategic functions.

The disputed area became a property of the Navy in 1954, after a donation from the city of Salvador, the expropriation of private farms and a series of agreements of exchange of land with previous landowners. The goal of the Navy was to create "a bay for water capture for the Naval Base of Aratu and ancillary facilities, residential buildings and for administrative purposes, under the jurisdiction of the Ministry of the Navy".

So far, all court decisions involving that area favored the Brazilian Navy, which managed to prove the legality and legitimacy of the occupation of the land. The court also issued, from 2010 on, successive eviction warrants for the Rio dos Macacos' community, understanding that, in addition to the future needs of the Navy, the community's presence could cause environmental degradation and water pollution, since there are headwaters in this region that supply the Macacos dam. Enforced compliance with the eviction warrants has been deliberately postponed by the Brazilian government in order to secure a peaceful solution, with the relocation of families with dignity and in full respect of their human rights.

Since 2012, the Federal Government has offered the community several proposals of peaceful resettlement in other lands, as follows:

- 1st proposal (May 2012): resettlement in "Tombo de Paripe" - 7.5 hectares (ha);
- 2nd proposal (Dec 2012): resettlement in "Tombo da Vila Naval" - 21 ha;
- 3rd proposal (Oct 2013): resettlement in "Tombos da Vila Naval" and Paripe - 28.5 ha;
- 4th proposal (March 2014): resettlement in "Tombos da Vila Naval" - 86 ha; and
- 5th proposal (May 2014): resettlement in 104 ha of "Tombos da Vila Naval" and SUDIC.

Meanwhile, the National Institute for Settlement and Agrarian Reform (INCRA) launched the Administrative Procedure No. 54160.003162/2011-57, which deals with the regularization of the land of "Comunidade Remanescente de Quilombo Rio dos Macacos". INCRA's Ordinance 623, of November 16, 2015, has recognized and declared as the Macacos Community's land the 301.3695 ha area. It also determined that the procedure to regularize two areas amounting to 104.8787 ha (92 ha of which belonging to the Federal Government and under the administration of the Navy, legitimate owner of such land) continued.

The Navy agreed with such terms as a compromise solution that reconciles, on the one hand, the Community's demands and, on the other, the Navy property rights and the strategic interests for the Brazilian national defense.

The procedure is now in its final demarcation phase. Once concluded, land amounting to 104.8787 ha will be handled to the Community. It represents one third of the area currently under the administration of the Navy.

Hence, in view of all that, the allegation that the Navy has violated the Community's possession rights or split its land is clearly unfounded.

The compromise solution stems from a genuine effort of dialogue among federal, state and local bodies, as well as Community members. The Brazilian Navy remained engaged with all other stakeholders in order to reach a fair and negotiated solution, acceptable for all parties involved, even though the Judiciary had already determined that the community should have left the area a few years ago.

In addition, the information that members of the Community have their freedom of movement restricted is also incorrect. All the same, they never lost or had their access to their means of subsistence restricted, including their right to farm.

On the contrary, Community members have always had their right to come and go guaranteed, even using the main gate of the naval village of Barragem. For security reasons, the Navy keeps record of families and their members, as well as relatives and guests previously declared as regular visitors. Despite the dispute over the possession of the land, they all have their access to the area where the Community is established fully guaranteed.

The Government is taking measures to obtain the environmental permits to build a road that will guarantee an independent entrance for the community. The federal Government has also included Community members in social programs, such as "Saúde na Família" and "Bolsa Família". It has also adopted necessary measures to update and/or regularize their social security situation, and to improve sanitation, access to electricity and other public services in the area.

Finally, Brazil rejects allegations that members of the community "Quilombola Rio dos Macacos" face abuse and violence, including torture and sexual violence against women perpetrated by members of the Navy. Over the past few years, possibly due to the court decisions favoring the Navy, the relationship between the Navy and community members has been strained. Several allegations of arbitrary and violent actions committed by the military personnel have been presented in various forums, without any evidence to support them.

Numerous investigative procedures were initiated in order to verify the veracity of the allegations. No evidence or proof has ever been found, which suggests that the allegations are baseless. In any case, the Federal Prosecutor's Office and the Public Defender's Office are two independent bodies within the Brazilian legal framework to which members of the Community can resort in case of violations of their human rights.

In conclusion, Brazil reiterates its support to the work undertaken by the Special Rapporteur and its commitment to the promotion and protection of human rights of all ethnic, racial and religious minorities. Brazil will continue its efforts to ensure that all people can live under conditions of equal rights, proper living conditions, peace and security, without any discrimination.